IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1344 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PARESHKUMAR ARVINDBHAI PATADIA & 2 - Petitioner(s)

Versus

DEPUTY COLLECTOR, STAMP DUTY VALUATION DEPT & 2 - Respondent(s)

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Appearance :

MR RC KAKKAD for Petitioner(s) : 1,
None for Respondent(s) : 1 - 2.
MS ARCHANA RAVAL ASST GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/02/2006

ORAL JUDGMENT

1. Rule. Ms.Archana Raval, learned AGP waives service of Rule on behalf of the respondents.

2. With the consent of the learned advocates appearing on behalf of the parties, the matter is taken up for final hearing today.

3. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Deputy Collector, Stamp Duty Valuation, City Division-1, Rajkot dated 10.2.2003 passed under Section 32(A) of the Bombay Stamp Act by which the petitioner is directed to pay deficit stamp duty of Rs.2,38,890/- plus Rs.250/- by way of penalty in all Rs.2,39,140/- with regard to the document No.4366 executed and presented before the Sub-Registrar, Rajkot dated 7.9.1999.

4. Shri R.C.Kakkad, learned advocate appearing on behalf of the petitioner has vehemently submitted that the impugned order dated 10.2.2003 is contrary to the provisions of Rule-4 of the Bombay Stamp (Determination of Market Value of Property) Rules; 1984 and as such, no particulars and/or reasons are

given by the authority for determining the valuation of the property in question at Rs.28,38,900/-. It is also further submitted that as such the impugned order came to be passed on the basis of the notice under Rule-4 of Rules; 1984 by which the petitioner was called upon to prove that the valuation of the property/land in question is at Rs.4,50,000/-. He has relied upon the judgment of this Court in case of *Budhabhai Merabhai Bharwad V. State of Gujarat reported* in (2005) 8 GHJ Page-374 : 2005 (2) GLR 1792. The learned advocate for the petitioner has also placed reliance on another decision of the learned Single Judge of this Court rendered in case of PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS. Reported in 2003 (1) GLR 454, wherein it is held that when the Chief Revenue and Controlling Authority passed an order in cyclostyled form wherein some gaps were filled up and few sentences were added, it is an order passed without proper application of mind and not speaking order and the same cannot be sustained in eye of law.

5.Ms.Archana Raval, learned AGP appearing on behalf of the respondents has submitted that the present special civil application may not be entertained as in fact, the petitioner has given statement on 21.12.2005 at the time of attachment of the Flat No.401/B (402) situated at Radhika Apartment that he is ready and willing to pay the the amount due and payable to the State Government and that he has voluntarily handed over possession of the said flat to the Recovery Officer and the said statment is not disclosed by the petitioner before this Court. Ms.Archana Raval, learned AGP appearing on behalf of the respondents is not in a position to dispute that in the impugned order dated 10.2.2003 no particulars are given that on what basis the Deputy Collector has come to the conclusion that the valuation of the property in question is at Rs.28,38,900/-. The learned AGP for the Authorities is also not in a position to dispute that as such the controversy in question is directly covered by the judgment of this Court in case of ***Budhabhai Merabhai Bharwad and another decision PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT &***

ORS.(supra). However, the learned AGP has submitted that the valuation of the property in question is fixed on the basis of the Jantri.

6. However, answering the contention of the learned AGP as regards the statement of the petitioner, Shri Kakkad, learned advocate for the petitioner has submitted that as the said statement was made at the time when the Officer had come to recover the amount all of sudden and he was insisting that amount be paid at a stoke and in the said statement it is stated that as the petitioner has not received the order passed under Section-32-A and he has received only notice of attachment, against which, they want to prefer an appeal before this Court and the said statement was subject to filing of an appeal and therefore, due to oversight the said statement is not produced. Be that it may, and even considering the statement dated 21.12.2005 that the same would be subject to without prejudice to the rights and contentions to prefer an appeal and consider the allegations that the impugned order dated 10.2.2003 was not served upon the

petitioner till notice of attachment was served and even considering the fact that the impugned order is cyclostyled, unreasoned and non speacking order, this Court has heard the matter on merits.

7.Heard the learned advocates appearing on behalf of the parties.

8.At the outset, it is required to be noted that the petitioner has now paid 50 % of the amount due and payable under the impugned order under Section-32-A of the Act which is directed to be retained with the Deputy Collector concerned as deposit subject to the decision that may be taken on remand which is required to be taken for the reasons mentioned hereunder.

9.I have gone through the order passed by the Deputy Collector. In the impugned order, no particulars and/or basis have been mentioned by the Deputy Collector that on what basis, he has come to the conclusion that the valuation of the property in question is at Rs.28,38,900/-. Nothing is on record

to suggest that the petitioner has been served with any material relied upon by the Deputy Collector, if any, for ascertaining and/or fixing the valuation of the property in question at Rs.28,38,900/-. It also prima-facie appears that even the impugned order has been passed on the basis of the notice issued under Rule-4 of the aforesaid Rules and by which the petitioner was called upon to prove that the valuation of the property is at Rs.4,50,000/- and no more. This Court has remanded the matter to the Deputy Collector for deciding the same afresh after issuing proper notice under Rule-4 of Rules 1984 and after giving an opportunity to the petitioner and after providing the material upon which the Deputy Collector wants to rely to determine the valuation of the property in question.

10.For the reasons stated above and for the reasons stated in the judgment of this Court in case of BHUDHABHAI MERABHAI BHARWAD and another decision PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS.(supra), the petition is allowed partly. The

impugned order passed by the Deputy Collector, Stamp Duty Valuation, City Division-1, Rajkot dated 10.2.2003 is hereby quashed and set aside and the matter is remanded to the Deputy Collector, Stamp Duty Valuation, City Division-1, Rajkot for deciding the same afresh in accordance with law and on merits and after issuing proper notice under Rule-4 of the Rules of 1984 and after giving an opportunity to the petitioner and after supplying necessary material to the petitioner upon which the Deputy Collector proposes to rely while determining and/or ascertaining the valuation of the land in question. The said exercise to be done within a period of 6 months from today. It is, however, made clear that if any amount is already paid/deposited by the petitioner pursuant to the order passed by the Deputy Collector, Stamp Duty Valuation, City Division-1, Rajkot dated 10.2.2003 then in that case, the respondents are not required to refund the said amount at this stage and the same would be subject to the ultimate outcome of the proceedings on remand and the said amount be adjusted on the basis of the order that may be

passed by the Deputy Collector.

11.Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

Direct Service is permitted.

(M.R.SHAH, J.)

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